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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/584,375	05/31/2000	Bruce Henry Garvie	GAR-001	1354
7590	12/09/2003		EXAMINER	
Aquilino Welsh & Flaxman PC Ste 112 2341 Jefferson Davis Hwy Arlington, VA 22202			STASHICK, ANTHONY D	
			ART UNIT	PAPER NUMBER
			3728	
			DATE MAILED: 12/09/2003	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/584,375	GARVIE
	Examiner	Art Unit
	Anthony D Stashick	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on September 25, 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 and 12-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 May 2000 is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ . |

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DETAILED ACTION***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the EP reference to Aotani EP 342,232 (EP '232) in view of Brady 2,222,650 and MacNeill 5,996,260. EP '232 discloses all the limitations substantially as claimed including the following: an insert (41a, 51a, 61a); a traction member (41b, 51b, 61b); the insert and traction member are distinct elements (see Figures 4b, 5b, 6b); the insert formed of a synthetic plastic material (see col. 5, lines 15-46 and col. 3, line 58-col. 4, line 15); the insert having a stem portion with releasable engagement means (see Figures 4b, 5b, 6b stem is threaded); the traction member secured to the insert and encasing the insert (see Figures 4b, 5b, 6b); the insert made entirely of synthetic plastic material (see col. 5, lines 15-46 and col. 3, line 58-col. 4, line 15); the stem portion having a

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first end (with threads) and a second end (with flange); the first end of the stem portion having engagement means (threads); the second end having a securing formation (flange); the insert having a spike opposite the first end 61e; traction member has a pair of passages arranged to receive a fastening tool (41d, 61d); the flange is extending radially from the stem (see Figures); the flange has a plurality of apertures through it (those for fastening the cleat to the shoe). EP '232 does not teach or disclose the traction member being made of plastic, the insert having a raised spike opposite the first end of the stem portion and aligned with the traction member and the plastic members having different hardnesses or colors. Brady '650 teaches that an insert with a traction member attached can have a raised spike 31 located on the insert and aligned with the traction member (point of 32) to aid in penetrating the ground. Brady '650 also teaches that the insert can be encased, except for the threaded portion, by rubber (as shown in Figure 15) to aid in the penetration of the ground by the traction member. MacNeill '260 teaches that outer traction member portion encasing an insert can be made of natural rubber, thermoplastic rubber, soft polyvinyl chloride, soft polyurethane, or soft plastic thereby aiding in gaining traction. This teaches that plastic can be used in place of rubber as the outer traction

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member of a spike to aid in gaining traction with the ground. MacNeill '260 also teaches that the different plastics used in a spike insert and traction member can made of different colors (col. 3, line 58-col. 4, line 11) to aid in determining the wear and tear on the cleat. Furthermore, MacNeill '260 teaches that the material of the traction member and the base can be made of different hardnesses, the material of the traction member being softer (i.e. less hard) than the material of the base (see col. 3, lines 11-42), the softer outer layer aiding in improving traction and the stiffness and hardness of the base layer aiding in giving support to the projections. Therefore, it would have been obvious, in view of Brady '650, to make the insert of a traction member with a spike that is aligned with the traction member, as shown in Brady '650, as well as encase the entire insert, except for the threaded portion, in rubber to aid in penetrating the ground and gaining traction. Furthermore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the traction member and insert member of EP '232 out of plastics, as taught by MacNeill '260, which can be of different hardnesses and colors, as taught by MacNeill '260, to aid giving support to the projection and help in dispersing impacts and to aid in visually determining the wear and tear on the cleat. With respect to claim 3 and the

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hardness of the materials, it appears that it would have been a mere matter of testing and optimization to find the hardness of the material of the insert that would allow for proper mounting of the cleat and preventing shearing of the stem.

Response to Amendment

3. Applicant's request for reconsideration has been thoroughly considered but has not been found persuasive. Applicant argues "Applicant's opinion that any modification of the rubber in Aotani or Brady based upon the disclosure of MacNeill would be inappropriate." This argument is not clearly understood. Applicant argues that Aotani does not disclose a plastic traction member as claimed. This argument is addressed in the combination of references as applied above. Furthermore, applicant argues that there is no teaching of substituting plastic for rubber in any of the references. This argument is addressed with respect to the disclosure of McNeill, which teaches the ability of using plastic in place of rubber, as noted in the rejection above. Applicant also states that there is the teaching of encasing one plastic in another plastic limitation has not been addressed. This teaching is shown in the combination of references as noted in the rejection set forth above. Applicant further argues that there is no

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suggestion of motivation to modify or combine the reference teachings. This argument is not clearly understood. The reasons to combine are clearly set forth in the rejection above due to the teachings of the references. Applicant argues that modifying Aotani and Brady would be contrary to the teachings of each reference. This argument is not clearly understood. The modifications noted in the rejection above would not destroy the references as McNeill teaches that rubber and plastic can be used for the same purpose. Applicant's arguments with respect to claim 4 are not clearly understood. It appears applicant is arguing more than that which is claimed. The claim only requires that the "raised spike" act as a wear indicator and does not mention any color change to indicate wear. Since the "raised spike" will wear with use, the shortening of the spike will act as the wear indicator, thereby meeting the limitations of claim 4.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS

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of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Monday through Thursday 8:00 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be

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reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Informal Fax for 3728	(703) 308-7769

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line 1-800-786-9199
Internet PTO-Home Page <http://www.uspto.gov/>



Anthony D Stashick
Primary Examiner
Art Unit 3728

ADS

December 8, 2003